

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

JULIE ANN MANGINA,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CASE #: <u>2:05-cv-00485-MEF-DRB</u>
	§	
CONSECO FINANCE CORP., et al.,	§	
	§	
Defendants.	§	

DEFENDANT GREEN TREE SERVICING LLC'S
MOTION TO DISMISS

COMES NOW Green Tree Servicing LLC ("Green Tree") and moves the Court to dismiss the Plaintiff's Complaint against it. As grounds therefore, Green Tree states as follows:

1. The Plaintiff's Complaint seeks damages for conduct occurring during Green Tree's bankruptcy proceeding in 2003. Due to various orders issued by the bankruptcy court in that proceeding, including the Order approving the sale of Green Tree to CFN Investment Holding LLC free and clear of all claims, liens and liabilities and the Order confirming Green Tree's Plan of Reorganization and barring all pre-discharge claims, the Plaintiff cannot assert claims nor seek relief from Green Tree for the allegedly wrongful conduct made the basis of this lawsuit.

2. Counts I (Willful Violation of FCRA), III (Invasion of Privacy Under State Law) and IV (Willful Violation of Ala. Code §§ 13A-8-192 and 13A-9-18) are not directed to Green Tree.

3. Count II (Negligent Violation of FCRA) fails to state a claim as a matter of law since Green Tree cannot be guilty of negligently violating 15 U.S.C. § 1681q, a statute that makes only a *knowing* and *willful* violation actionable.

4. Count V (Violation of FCRA) fails to state a claim against Green Tree as a matter of law because an employer cannot be held liable for the unauthorized willful violations of the FCRA by an employee who obtains a credit report under false pretenses and for personal use.

5. In support of this motion, Green Tree submits the following:

- A. Bankruptcy Petition of Green Tree (then known as Conseco Finance Servicing Corp.), attached hereto as **Exhibit A**;
- B. Affidavit of David Schwartz, attached hereto as **Exhibit B**;
- C. Order Confirming Green Tree's Plan of Reorganization, attached hereto as **Exhibit C**;
- D. Green Tree's Plan of Reorganization, attached hereto as **Exhibit D**;
- E. Notice of Effective Date, attached hereto as **Exhibit E**.

WHEREFORE, Green Tree Servicing LLC respectfully requests dismissal of the Plaintiff's Complaint.

/s/ Austin Huffaker

R. AUSTIN HUFFAKER, JR. (HUFFR3422)
Attorney for Green Tree Servicing LLC

OF COUNSEL:

RUSHTON, STAKELY, JOHNSTON &
& GARRETT, P.A.

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of June, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

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Of Counsel